

STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:)	Docket No. 02-AFC-4
Application for Certification of the)	
Walnut Energy Center (Turlock)	Staff's Second Prehearing
Irrigation District))	Conference Statement
_____)	August 19, 2003

Pursuant to the Committee's June 26, 2003 Notice of Evidentiary Hearing and Second Prehearing Conference, staff submits its Second Prehearing Conference Statement. Staff published its Final Staff Assessment (FSA) on August 8, 2003. The FSA contains a complete discussion of all issues associated with the proposed project, with the exception of hazardous materials management. Staff expects to file that section separately on or before August 29, 2003. Apart from hazardous materials management, the FSA indicates that the project will comply with all applicable laws ordinance regulations and standards (LORS) and will not create significant adverse environmental impacts, provided the conditions of certification identified by staff in the FSA are implemented. Staff plans to conduct one more workshop (in late August) to determine whether any modifications to the conditions of certification are necessary and whether any additional consensus can be reached in those areas where staff and applicant disagree. Our response to the specific items of the Committee Notice is as follows:

1. Topic areas complete and ready for evidentiary hearings.

Staff believes that all topic areas are ready to proceed to evidentiary hearings, with the exception of hazardous materials management.

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2. Topic areas not complete and ready to proceed to hearings.

Hazardous Materials Management is the only topic area that is not complete. Staff anticipates that it will file the Hazardous Materials Management section of its FSA on or before August 29, 2003.

3. Topic areas that remain in dispute.

With the staff proposed conditions of certification, all impacts caused by the project can be mitigated and that the project will comply with all applicable LORS. However, in three technical areas, staff has recommended conditions of certification that the applicant does not believe are necessary.

Air Quality: In this area, staff has proposed mitigation measures in addition to those required by the air district for construction impacts. Staff also has proposed a lower level for ammonia slip than required by the air district. The applicant opposes these requirements.

Compliance: The applicant opposes the imposition of **COM-8**, which requires preparation and review of site-specific security plan for the facility. The applicant claims that the condition raises serious Constitutional and civil liberty questions that should be addressed in a rulemaking. Staff disagrees.

Land Use: Staff believes the project complies with LORS, but also identified a contribution from the project to the cumulative loss of agricultural land. Staff recommended a measure that would mitigate the contribution to a level that is not significant. The applicant opposes any mitigation requirement, because the City of Turlock identified loss of agricultural land as a significant adverse impact in the EIR prepared when the property was re-zoned in 1993 from agricultural to industrial, finding no feasible mitigation and issuing a

statement of overriding considerations.¹ Staff believes that the City's previous environmental review for rezoning 4,700 acres does not limit the Energy Commission's authority and responsibility for evaluating the loss of 18 acres associated with this specific project.

However, staff also believes that this issue presents questions of law, rather than questions of fact, and should be addressed in briefs and, if the Committee wishes, oral argument. Staff recommends that the Committee take judicial notice of the 1993 EIR and the various City resolutions addressing the 1993 EIR, obviating the need for evidentiary hearings on this subject.

4. Witnesses.

Staff's witnesses are identified in the FSA, which also includes a brief summary of the conclusions for each technical area, and witness qualifications. Staff anticipates that its direct testimony in the first two contested topics identified above will be as follows:

Air quality – 30 minutes
Compliance – 30 minutes

5. Topics for Cross-Examination.

As discussed above, staff believes that the topics requiring cross examination will be air quality and compliance. Staff does not know how much time it will require to conduct cross-examination on these subjects until we have an opportunity to review the applicant's testimony.

6. Exhibits. Staff will use the FSA as its testimony.

¹ In 2002, the City conducted a review of its General Plan, adopted a Negative Declaration which concluded that no changes to the original EIR were required, and incorporated the statement of overriding considerations from the 1993 proceeding by reference.

7. **Proposed Dates and Deadlines.** Unknown. Staff will be in a better position to propose dates after we have conducted an FSA workshop and have reviewed the applicant's testimony.

Date: August 19, 2003

Respectfully submitted,

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